

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

NOTICE OF MOTION

vs.

Docket No. 1:23-MJ-00551-JLS

SCOTT J. BARNES,
Defendant

Motion By: David B. Cotter, Esq., Attorney for Defendant Scott J. Barnes

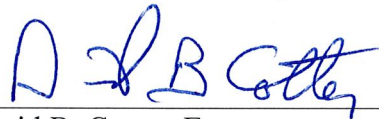
Date, Time, & Place: Before the Hon. John L. Sinatra, Jr., U.S.D.J., 2 Niagara Square, Buffalo, New York 14202 at a date and time to be determined by the court

Supporting Papers: Affirmation of David B. Cotter dated December 14, 2023

Relief Requested: Return or release of personal property and use of a C-Pap Machine / medication

Dated: December 14, 2023
Buffalo, New York

COTTER & COTTER, P.C.



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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

AFFIRMATION

vs.

Docket No. 1:23-MJ-00551-JLS

SCOTT J. BARNES,

Defendant.

STATE OF NEW YORK }

COUNTY OF ERIE } ss.:

David B. Cotter, an attorney at law duly licensed to practice before the United States District Court for the Western District of New York and I affirm the following to be true under penalty of perjury.

1. I represent the Defendant, Scott J. Barnes in the above referenced matter and have since initially receiving a call from the Public Defender's Office on Friday, December 8, 2023.
2. Mr. Barnes was taken into custody in the early morning hours on December 7, 2023; he has been held in custody since then.
3. On December 14, 2023 a Detention Hearing was held before U.S. Magistrate H. Kenneth Schroeder, Jr., who, after ninety minutes of proffering and argument, ordered Mr. Barnes released on conditions.
4. At the conclusion of that proceeding, the Government requested, and Magistrate Schroeder granted, a stay of Barnes' release on conditions pending the government's appeal.
5. Although we did not conclude the Court appearance until 6:00 p.m. on December 12, 2023, the Government e-filed its Notice of Motion and Motion for an Appeal of the Release Order at 5:45 p.m.

6. As this Affirmation is dictated, the Government has not yet replied to this Court's indications as to when the appeal can be argued on Monday, December 18, 2023.
7. In the meantime, there are some matters that need the Court's direct involvement and attention.
8. To my understanding, at some point in March 2023 Mr. Barnes was involved in a motorcycle mishap which resulted in his back being broken. As I understand it, he was initially unaware he was hurt until, when approximately two days after that accident, he lost feeling in his legs. He had a major back surgery in March 2023 in an effort to stave off paralysis.
9. Mr. Barnes is a journeyman with the International Brotherhood of Electrical Workers and was out of work for several months following that surgery. As I understand it, sometime in the early to mid-fall 2023, he attempted to return to work and managed to go to work for several days in a row; however, in a non-work related matter, he fell and bent the titanium rod that was inserted in his back in March 2023.
10. He had a subsequent, major back surgery on or about November 14, 2023 at ECMC.
11. He exists in pain. As I understand it, the left side of his back is now very swollen and painful. It is my understanding that the Livingston County Sheriff's Department has refused to allow Mr. Barnes access to his prescribed pain medication¹, and on December 14, 2023 they refused to provide gabapentin, an anti-inflammatory and/or nerve medication which could help to alleviate some of his pain and discomfort.

¹ I believe that this was mentioned in court on December 12, 2023 but have not yet seen a transcript.

12. In addition to the back surgeries, Mr. Barnes suffers from sleep apnea. As I understand it, his personal C-Pap machine – which allows him to sleep – was retrieved by friends and brought to the Livingston County Jail where Deputies refused to receive it.
13. I am aware of other cases in the Western District of New York where Courts have gotten involved in the provision of C-Pap machines to individuals held in custody who suffer from sleep apnea.
14. Lastly, Mr. Barnes has continuing financial obligations relating to vehicles and insurance payments. I understand that Mr. Barnes wishes his personal property (wallet, keys, bank cards, credit and debit cards, identification, etc) be released to his girlfriend, Traci Nitzel Nesman. It is my understanding that her request to the Marshalls was denied. Mr. Barnes would like Ms. Nitzel Nesman to be able to use his funds so that his executory obligations can be met.
15. I am hopeful that these matters can be addressed either before or at the argument to take place on (hopefully) December 18, 2023.
16. In the meantime, and until then, if the Court sees fit, it would be well received if the Court would order the Marshalls to direct the Livingston County Sheriff to attend to Mr. Barnes' medical needs.

WHEREFORE, your affiant respectfully requests this Court enter an Order consistent with the relief requested in this Motion.

Dated: December 14, 2023
Buffalo, New York


David B. Cotter

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

CERTIFICATE OF SERVICE

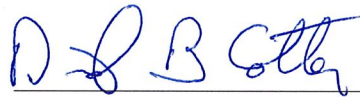
SCOTT J. BARNES,

Docket No. 1:23-MJ-00551-JLS

Defendant.

David B. Cotter, states that on December 14, 2023 a Notice of Motion and Affirmation were electronically filed with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Assistant United States Attorney Joseph M. Tripi



David B. Cotter